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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

MAURITIUS*

[1 March 1995]

CONTENTS

	Paragraphs	Page
Introduction	1 - 9	2
I. General Information	10 - 20	3
II. Implementation of specific articles of the Convention	21 - 62	5
Articles 1 and 2	21 - 28	5
Article 3	29 - 36	6
Article 4	37	8
Articles 5, 6, 7 and 8	38 - 39	11
Article 9	40 - 42	12
Articles 10, 11 and 15	43 - 55	12
Articles 12 and 13	56 - 61	14
Articles 14 and 16	62	16
List of annexed documents		17

* The present document replaces the initial report submitted by the Government of Mauritius on 10 May 1994 and reproduced in document CAT/C/24/Add.1.

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Introduction

1. Mauritius is an island of 720 square miles found in the Indian Ocean, which has a population of about 1.2 million. It is a parliamentary democracy led by a prime minister, which operates with the help of the Council of Ministers and the National Assembly. The head of State is the President who is elected by a majority of all members of the Assembly on a motion made by the Prime Minister. The powers of the President are largely ceremonial.

2. The State of Mauritius holds fair and free national and local elections at regular intervals. These elections are supervised by an independent Electoral Commission.

3. The economy is based on labour-intensive, export-oriented manufacturing (mainly textiles), sugar and tourism. About 85 per cent of agricultural land is planted with sugar-cane. The latest economic indicators point to a low inflation rate of 7.3 per cent and a low rate of unemployment representing 1.6 per cent of the working population. The economy achieved an annual growth of about 5 per cent during 1994. Per capita income almost doubled over a span of six years to attain approximately US$ 3,500 at present.

4. Freedom of expression is protected under section 12 of the Constitution and this is largely reflected in practice. The media is represented by a dozen privately owned daily, weekly and monthly newspapers freely expressing different political viewpoints and partisan views. The press is independent of any governmental influence and is at times highly critical of the latter. There exists, however, under the provisions of the Criminal Code, offences such as publishing false news and libel to curtail any abuse on the part of the press.

5. None the less, the press, along with a strong bar knowledgeable about the rights of citizens, contribute towards the democratic process by making the authorities accountable for any abuse which may result from their dealings with citizens. On the other hand, the Government controls the only radio and television stations in the country. However, in view of the Government's latest expressed policy regarding the liberalization of the air waves, it is anticipated that in the very near future, independent radio and television stations will be allowed to broadcast nationally.

6. The Government administratively establishes minimum wages which vary according to the sector of employment and reviews minimum wages each year based on inflation. The actual salaries of most workers is higher than the recommended minimum wage due to the present labour shortage. The standard legal working week is 40 hours. The Government sets health and safety standards and officials of the Ministry of Labour ensure that employers comply with the health and safety requirements. There are sanctions of a penal nature which are provided for by law in cases of non-compliance with the said requirements.

7. In the context of the government policy to provide a welfare State, free health services are available to the population. Private clinics also exist

to cater for the needs of those who choose to pay for their treatment. There is also free eduction up to the tertiary level whilst primary education is compulsory by law for all children.

8. There is no State religion and the Government does not restrict or interfere with worship by any religious denomination. This aspect of the freedom of religion as propounded in the Constitution has special importance in the light of the social fabric of Mauritian society which comprises all races, cultures and religions.

9. Mauritian women and men enjoy equal rights. Over the years the concept of the constitutional equality of the sexes has been put into practice by various pieces of legislation passed to narrow the gap between the sexes. The latest significant move on the part of the Government comes with the recent announcement that in matters of nationality, the existing discriminatory treatment of Mauritian women would soon be amended.

I. GENERAL INFORMATION

10. The Constitution of Mauritius, a written document dating back to the independence of the Island in 1968, rests on two fundamental tenets: the rule of law and the doctrine of the separation of powers. It is provided under section 1 of this Constitution that the Republic of Mauritius shall be a "sovereign democratic State"; this is clearly in consonance with the fundamental rights and freedoms guaranteed under chapter 2 of the Constitution.

11. The Constitution being the "supreme law of the land", it is the duty of the Supreme Court not only to interpret but also to enforce obedience to its provisions. It is up to the Court to determine the validity of any statute which is alleged to be unconstitutional. When a law is found to be in contravention of the Constitution, the Court's primary concern is to ensure that the situation is redressed as conveniently and expeditiously as possible.

12. The Constitution itself makes provisions under its section 17 to provide redress to any individual whose rights under chapter 2 have been contravened.

13. Even where the law makes provisions for disciplinary offences to be dealt with by certain tribunals or service commissions (by bestowing upon them special jurisdiction to that effect), decisions so taken by such bodies are ultimately reviewable by the Supreme Court. Most of the provisions of the Convention are already catered for by virtue of chapter 2 of the Constitution.

14. The Convention itself can be resorted to, should the occasion arise, and any matter connected therewith may be referred to the courts of the country, in addition to or exclusive of the already existing provisions of the law. The provisions of the Convention are of a persuasive character in view of the frequent pronouncements of the courts emphasizing the importance of respecting and adhering to international obligations contracted by the State of Mauritius. It is to be noted, however, that the terms of the Convention are not directly enforceable by the courts as such.

15. In addition to the normal channels of complaint through the police authorities, citizens of the Republic of Mauritius may have recourse to the office of the Ombudsman and/or the office of the Director of Public Prosecutions. Section 97 of the Constitution provides as follows:

> "[...] the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken and in which:
>
> (a) a complaint under this section is made;
>
> (b) he is invited to do so by any Minister or other member of the assembly; or
>
> (c) he considers it desirable to do so of his own motion."

16. The Director of Public Prosecutions may require a magistrate to hold an inquiry into the cause of death and circumstances connected therewith when a person has died in prison or whilst in police custody. Under section 64 of the District and Intermediate Courts (Criminal Jurisdiction) Act, the Director of Public Prosecutions has the power to request a magistrate to inquire into and examine any offence. These inquiries are normally held in open court and all interested parties may be assisted by their legal advisers. The findings of the magistrate are then referred to the Director of Pubic Prosecutions who then decides on the course of action to be taken. It is to be noted that the Director of Public Prosecutions is appointed by the Judicial and Legal Service Commission, an independent body, as per section 72 of the Constitution.

The Judicial System

17. The judicial system in Mauritius is largely inspired by the British court system which practises the adversarial system of litigation. It consists of the Supreme Court, the Intermediate Court and the district courts which all have an original jurisdiction with regard to civil and criminal matters. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law. In addition, under section 82 of the Constitution, the Supreme Court has jurisdiction to supervise any civil or criminal proceedings before any subordinate court and to make such orders it considers necessary. The Supreme Court also has an appellate jurisdiction whereby it can review its own decisions and those of subordinate courts.

18. The decisions of the appellate division are in turn subject to appeal to the judicial committee of the Privy Council on matters of general public importance. According to the Constitution, the Supreme Court is composed of the Chief Justice and eight other judges. District courts are presided over by magistrates. The majority of criminal matters, with the exception of the most serious ones (such as murder and drug trafficking), are referred to the

courts of higher jurisdiction, namely, the Intermediate Court and the Supreme Court. It is to be noted that the jurisdiction of the Intermediate and district courts in respect of civil matters are subject to monetary thresholds.

19. Defendants have the right to retain private counsel of their choice. However, in certain circumstances where there are genuine financial constraints or a likelihood of his constitutional rights being infringed, a party may be allocated, upon making an application to the court, a counsel to represent him out of public funds.

20. For the purposes of this present report, with reference to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the following will be considered:

(a) Section 7 under chapter 2 of the Constitution of Mauritius;

(b) The Reform Institution Act 1988;

(c) The Child Prosecution Act 1994 and the Social Aid Act 1983;

(d) The Extradition Act of 1970;

(e) International instruments to which Mauritius is a signatory;

(f) Reported cases of complaints.

II. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE CONVENTION

Articles 1 and 2

21. The term "torture" as defined in article 1 of the Convention, does not find its exact counterpart in Mauritian legal texts. However, by virtue of section 7 of the Constitution, there are provisions made for the protection from inhuman treatment.

22. Section 7 (1) provides that: "No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment." It is therefore evident that no act of torture as envisaged in article 1 of the Convention could ever find any justification before any court of law or other forum of competent authority in Mauritius. Furthermore, under Title 2, chapter 1, of the Criminal Code, it is stipulated to be a criminal offence to use or to attempt to use any violence or threat of violence on the person of any individual, as provided, inter alia, by section 215 et seq thereof which deal with all forms of offences against the individual.

23. By the same token, the corresponding sanctions provided by law with regard to each offence are stipulated. The State usually undertakes the criminal prosecution of such offences and the aggrieved parties are left with

the added option of instituting civil actions in damages to obtain appropriate compensation for the interference with their rights. An individual may also resort to a private prosecution in cases where the Director of Pubic Prosecutions does not decide to institute official criminal action against a suspected party as provided by sections 4 and 5 of the Criminal Procedure Act.

24. Section 10 (1) of the Constitution provides the following: "Where any person is charged with a criminal offence, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law." Over the years the courts have established, with compelling authority, that the rights of the accused party begin from the moment of his arrest and/or detention.

25. The police, for their part, have a duty to act in accordance with the Judges' Rules and administrative directions to the police, which provide a useful guide to the police for the interviewing of suspects and in recording their statements. The police are also required to inform a person under arrest or in detention that he has a right to consult a legal adviser. In addition, the police are also guided by their internal Standing Orders as to the treatment to be given to prisoners. Failure on the part of the police to comply with these administrative orders (which are legally enforceable) would render statements given by accused parties in conditions other than those prescribed inadmissible as evidence in courts of law.

26. Complaints against the police are investigated by a unit of the police force which submits the results of their inquiry to the Director of Public Prosecutions, who is responsible for all criminal proceedings before a court of law.

27. It is of interest in this respect to underline the provisions of section 72 (6) of the Constitution which states: "In the exercise of the powers conferred upon him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.".

28. The fact that the investigative unit in matters of police complaints is constituted from within the police force has been the subject of some criticism, but the recently appointed Commissioner of Police has undertaken to provide, inter alia, for the setting up of an independent investigative unit.

Article 3

29. There are no provisions in the body of Mauritian law similar to those of article 3 of the Convention. However, with regard to extradition, the Extradition Act of 1970 lays down the procedures when there is a request by a foreign State to surrender an offender. Similarly, under Part III of the Act, provisions are made for the extradition of escaped offenders to the jurisdiction of the Mauritian courts.

30. An extraditable crime under the Act is defined as an offence against the law of a foreign State, the act constituting which, if it took place in or within the jurisdiction of Mauritius, would amount to an offence against the law in force in Mauritius and:

(a) In the case of a non-Commonwealth country, amounts to one of the offences specified in the extradition treaty with that country;

(b) In the case of a Commonwealth country, the maximum penalty for which is death or imprisonment for not less than 12 months; and

(c) Is described in the First Schedules; or

(d) Would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.

31. The surrender of persons is restricted by virtue of section 7 of the Act. Section 7 (1) provides, inter alia, that an offender shall not be surrendered to a foreign State where:

(a) The offence in respect of which the request for his surrender is made is one of a political character;

(b) He provides to the satisfaction of the Minister that the request for his surrender has in fact been made with a view to trying or punishing him for an offence of a political character.

32. Section 7 (4) provides that: "A person shall not be surrendered to a foreign State in respect of an offence if he has been acquitted or pardoned by a competent tribunal or authority in any country, or has undergone the punishment provided by law, of or a part of any country, in respect of that offence or of another offence constituted by the same act as that offence."

33. Section 7 (5) provides that an offender shall not be surrendered to a foreign State where the Minister has reasonable grounds for believing that:

(a) The request of his surrender, although purporting to have been made in respect of an offence for which, but for this section, he may be liable to be surrendered to that State, was made for the purpose of prosecuting or punishing him on account of his race, caste, place of origin, nationality, political opinions, colour, or creed; or

(b) If the offender is surrendered to that State he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, caste, place of origin, nationality, political opinions, colour or creed.

34. Under sections 8 and 9 every request for the surrender of an offender shall be made to the Minister of External Affairs for transmission to the Attorney-General. The latter shall give notice to a magistrate and authorize him to issue a warrant for the arrest of the offender.

35. In the case of Heeralall v. Commissioner of Prisons [1992 MR 71] the applicant was committed to prison pending his extradition to France where he was wanted on a charge of "homicide volontaire". He sought a writ of habeas corpus before the Supreme Court to order his release. The issue was whether there was an extradition treaty between Mauritius and France. The Court ordered his release on the grounds that there was no evidence of a binding treaty between Mauritius and France and held that whether an international treaty is binding is a matter which must be shown by expert evidence. The Court expressed the view, albeit obiter, that "In countries which recognise fundamental rights and where fundamental rights, including right of due process, are entrenched in the constitution, the extradition legislation must be read subject to these guarantees. Extradition being a derogation from the right to liberty and freedom of movement recognized in sections 5 and 15 of our Constitution, it is doubtful whether provisions governing its implementation would be interpreted otherwise than strictly." The judges made reference to the judgement of the European Court in the case of Soering v. the Government of the United Kingdom which found that the United Kingdom would be violating the guarantees against such treatment and punishment if it extradited Mr. Soering to the United States where he would be facing a capital charge. In the Soering case there was evidence before the court of the cruel treatment and punishment consisting in the long wait on death row to which people sentenced to death in the United States are subject, and the conditions of great anxiety and mental torture which they consequently endure during their confinement.

36. There are five persons at present on death row in Mauritius, who are awaiting the outcome of their appeals. Of the five cases, four relate to drug offences whilst the other relates to murder.

Article 4

37. As already mentioned in Part I, the specific offence of torture in article 1 of the Convention is not provided for in the laws of the reporting State, but acts of torture are prohibited under the wider provisions of the Constitution and are punishable under the Criminal Code. The relevant sections are:

(a) Section 77 - Abuse of authority by public officer:

"[...] Where a public functionary, agent of, or person appointed by the Government orders or commits any arbitrary act, prejudicial either to individual liberty, or to the civic rights of one or more individuals, or to the Constitution of Mauritius, and does not prove that he acted by order of his superior, in matters within the competency of the latter, he shall be condemned to imprisonment or to a fine not exceeding 3,000 rupees."

(b) Section 79 - Public officer flouting claim of illegal detention:

"[...] Any public functionary entrusted with the administrative or judicial police, or any person having the custody of a prisoner who refuses or neglects to pay due regard to any demand tending to prove any illegal or arbitrary detention, whether in any house destined for the

custody of persons under detention or elsewhere, and who does not prove having reported such detention to his superior officer, shall be subject to the punishment specified in section 77."

(c) Section 80 - Arbitrary detention by public officer:

(1) "[...] Any gaoler or keeper of a gaol, prison or house of correction, who (a) receives a prisoner without warrant or sentence, or who refuses upon demand to deliver to the prisoner a copy of the order under which the prisoner was delivered over to him; (b) detains or refuses to produce the prisoner to any judicial or police officer entitled to demand the appearance of the prisoner, without proving a prohibition from the Director of Public Prosecutions; (c) refuses to exhibit his register to any judicial or police officer, shall be guilty of arbitrary detention, and be liable to imprisonment or to a fine not exceeding 2,000 rupees."

(d) Section 81 - Public officer detaining person in unauthorized place:

"[...] Any public officer who detains, or causes to be detained, any individual except in the places fixed by Government, shall suffer the punishment specified in section 77."

(e) Section 84 - Violation of domicile by public officer:

"[...] Any functionary of the administrative or judicial body, or any judicial or police officer or any civil or military authority, acting in such capacity, who enters the domicile of another person against the will of that other person, except in cases provided by law, and without complying with the prescribed formalities, shall be punished by a fine not exceeding 1,000 rupees, and by imprisonment for a term not exceeding 6 months."

(f) Section 138 - Offences by public officers:

"[...] Except in those cases where the law specially determines the punishments incurred for crimes or misdemeanours committed by public officers or functionaries, those among them who participate in any other crime or misdemeanour which it was their duty to watch over or to repress shall always suffer the maximum of the punishment attached to that description of misdemeanour or crime."

(g) Section 215 - Interpretation of "manslaughter":

"[...] Homicide committed wilfully is manslaughter."

(h) Section 216 - Interpretation of "murder":

"[...] Manslaughter committed with premeditation or by lying in wait is murder."

(i) Section 222 - Penalty for murder and infanticide:

"[...] (1) Any person who is guilty of murder, or murder of a newly born child, shall be sentenced to death and any person guilty of attempt at murder, or murder of a newly born child, shall be liable to penal servitude for life or for a term not exceeding 20 years."

(j) Section 223 - Penalty for manslaughter:

"[...] (1) Any person guilty of manslaughter preceding, accompanying or following another crime shall be liable to penal servitude for life."

(k) Section 228 - Assault with aggravating circumstance:

"[...] (1) Any person who wilfully inflicts any wound and blow, or is the author of any other violence or assault, shall, if such act of violence has caused any sickness or incapacity for personal labour for more than 20 days, be punished by imprisonment and a fine not exceeding 3,000 rupees.

(2) Where as a result of any act of violence specified in subsection (1) the person injured or assaulted has had an arm, a leg or a thigh broken, or has lost the use of both eyes or of one eye only, the offender shall be punished by penal servitude not exceeding 10 years and to a fine not exceeding 3,000 rupees.

(3) Where the wound or blow inflicted wilfully, but without intention to kill, shall nevertheless cause death, the offender shall be punished by penal servitude for a term not exceeding 10 years."

(4) Where the crime specified in subsection (3) has preceded, accompanied or followed another crime, the offender shall be punished by penal servitude."

(i) Section 229 - Assault with premeditation:

"[...] Where there has been premeditation or lying in wait, the punishment, if death has ensued, shall be penal servitude and if death has not ensued, shall be penal servitude for a term not exceeding 10 years."

(j) Section 230 - Assault:

"[...] (1) Where such wound, blow or other violence or assault has not caused any sickness or incapacity from personal labour of the description mentioned in section 228, the offender shall be punished by imprisonment for a term not exceeding one year, and by a fine not exceeding 2,000 rupees.

(2) Where there has been premeditation or lying in wait, the offender shall be punished by imprisonment and by a fine not exceeding 3,000 rupees."

(k) Section 236 - Administering noxious substance:

"[...] (1) Any person who administers to or causes to have been administered or taken by any other person any drug, poison or other destructive or noxious thing, so as to endanger the life of such person, or so as to inflict upon such person any grievous bodily harm, or so as to stupefy or overpower such person and facilitate the commission of any offence, shall be liable to penal servitude for a term not exceeding 10 years.

(2) Where death has ensued from the commission of an offence under subsection (1), the offender shall be punished by penal servitude for life or for a term not exceeding 20 years.

(3) Any person who administers to or causes to be administered to or taken by any person any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person, shall be liable to penal servitude for a term not exceeding 5 years.";

(l) Section 258 - Unlawful arrest, detention and sequestration:

"(1) [...] Any person who, without any order from the constituted authorities, and except in the cases where the law directs the arrest of accused parties, arrests, detains or sequesters any person, shall be punished by penal servitude for a term not exceeding 10 years and by a fine not exceeding 5,000 rupees.";

(m) Section 259 - Penalty for unlawful arrest in certain cases:

"[...] In the following cases -

(a) where the arrest has been executed in false dress or a forged name, or under a forged order from public authority;

(b) where the individual arrested, detained or sequestered has been threatened with death; or where such individual has been subjected to any corporal torture, the offenders shall be punished by penal servitude for a term not exceeding 10 years."

In the event of any of the above-mentioned offences disclosing an offence of attempt, it is important to note that the Criminal Code provides for prosecution for the offence of attempt as per section 45 of the Interpretation and General Clauses Act.

Articles 5, 6, 7 and 8

38. Provisions similar to those contained under article 5 (a) of the Convention are included in section 134 of the Courts Act. This section provides that where an offence punishable under any enactment is committed on the high seas or takes place on board a ship or aircraft registered in Mauritius, the appropriate court shall have jurisdiction to try the offence and to award penalties.

39. Similarly, under section 10 of the Civil Aviation Act, any act or omission which takes place outside Mauritius in an aircraft registered in Mauritius shall be deemed for the purposes of civil and criminal jurisdiction to have taken place on Mauritian territory. In this context, Mauritius has yet to legislate to come in line with the notion of quasi-universal jurisdiction as propounded by the Convention. An offender who is present in Mauritian territory cannot be prosecuted for offences committed outside Mauritian jurisdiction; however, the Extradition Act 1970 will come into effect for the surrender of offenders under article 4 if and when a request is made by the foreign country to that effect. Mauritius is not a signatory to any extradition treaty but the Convention itself will be considered as sufficient legal basis for extradition with respect to offences committed under article 4, subject to the provisions of the Extradition Act. There is no legislation which deals specifically with a scheme of mutual assistance between States in criminal proceedings, but it has often been the case that a wide measure of informal assistance has been extended to other States as a matter of courtesy. It is to be noted that anything which requires the issue of a warrant, a court order or the seizure of property can only be done under clear statutory authority.

Article 9

40. There is no legislation at present which implements the provisions of article 9 of the Convention. However, the practice of providing mutual assistance in criminal matters has long been seen as an important objective, the more so since Mauritius has set itself seriously upon developing its offshore sector and ancillary financial services. In this context, Mauritius has been anxious to safeguard its image in not being associated with instances of money laundering, the prevention of which would inevitably entail the assistance of friendly countries.

41. During the last meeting of the Commonwealth Law Ministers held in Mauritius in November 1993, Mauritius expressed its willingness to give its full support to the Commonwealth scheme for mutual assistance. The scheme, once implemented, will enable formal procedures to be invoked to provide assistance to court investigations and prosecution agencies across the whole range of serious criminal conduct, enabling evidence to be obtained and confiscation of proceeds orders to be made and enforced.

42. At the police level, Mauritius being a fully fledged member of Interpol, there is thorough international cooperation with respect to the prevention, detection and suppression of crime.

Articles 10, 11 and 15

43. As part of their training, officers of the police force are expected to be fully acquainted with the Standing Orders and Judges' Rules issued to them in the performance of their duties. Failure on the part of the police to comply with these administrative orders will render evidence obtained in the course of an investigation inadmissible in a court of law. In addition to their training, courses are organized under the aegis of the Ministry of Civil Affairs and run by lawyers of the State Law Office. The courses are geared

towards ensuring that police and prison officers respect the rights of a suspect and/or accused party right through from the time of arrest to the time he or she is brought to trial.

44. With regard to the Judges' Rules (copy of which is annexed), special emphasis is being laid on the principles enunciated under note 3 in the Introductory notes thereof:

> "[...] (c) Every person at any stage of an investigation should be able to communicate and to consult privately with a legal adviser. This is so even if he is in custody provided that in such a case, no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by doing so;
>
> (d) When a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for that offence;
>
> (e) It is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression."

45. The case of R v. Boyjoo [1991 MR 284] (annexed) illustrates the practical application of the above.

46. Under the Reform Institutions Act and the regulations made pursuant to it, guidelines are laid down for the administration and treatment of detainees of specified institutions. An "institution", as defined under the Act, includes, inter alia, a prison, a correctional youth centre, a rehabilitation youth centre, and even includes grounds and buildings within the institution enclosure and all premises of a temporary detention centre.

47. The Act further provides, at section 53, for the establishment of Boards of Visitors. It is provided that such Boards will comprise not less than three magistrates. Under section 54 of the same Act, among the functions of the Boards are hearing of complaints made by detainees and conducting inquiries into the conditions of detention of detainees.

48. Furthermore, it is provided under section 31 that every detainee must be seen at regular intervals by a medical officer who shall keep a casebook showing the name, disease, ailment or complaint and treatment of every detainee who is sick, ill or injured. More importantly, section 60 specifically provides for a judge or magistrate to visit an institution and note his observations in the visitor's book.

49. The Act also provide that no detainee shall be subjected to punishment or privation of any kind. This section is subject to section 12, which states that no officer shall use force against a detainee except as is reasonably necessary: (i) in self-defence; (ii) in the defence of another person;

(iii) to prevent a detainee from escaping; (iv) to compel obedience to an order which the detainee wilfully refuses to obey; (v) to maintain discipline in the institution.

50. By virtue of section 42 of the Act and its standing order 75, the use of handcuffs, strait-jackets and other material constituting body restraints are prohibited except (i) as a precaution against escape during a transfer (provided that they are removed when the prisoner appears before a judicial or administrative authority, unless that authority decides otherwise); (ii) on medical grounds by instruction and under the supervision of the medical officer; (iii) by order of the Commissioner, if other methods of control have failed, in order to prevent a prisoner who is indulging in violence from injuring himself or others or from damaging property. In the latter situation, the concurrent opinion of a medical officer is required before the resort to such action.

51. Overall, the Reform Institutions Act establishes a range of minimum standards for all aspects of prison administration that is essential for the maintenance of humane conditions and treatment of detainees. It is also of paramount importance for the classification of detainees and takes into account their judicial and legal situation (i.e. whether untried or convicted, juveniles, first offenders or habitual offenders due to be serving short or long sentences).

52. The rights of children also benefit from the guarantees enunciated by the Convention. A child who is arrested or detained must at all times have the supervision of his responsible party; no statement can be taken from him by the police in the absence of his guardian. There is also provision under the Courts Act for a Juvenile Court which does not conduct its business in open court. The magistrate in such matters has the discretion to resort to measures other than punitive ones in dealing with juveniles and the probation report can be made available to the court upon a request to that effect being made by the magistrate or any party to the proceedings.

53. For the protection of children, section 5 of the Social Aid Act and article 376 of the Civil Code provide for the removal of a child who is ill-treated by his parents from their custody and under section 5 (5) of the Social Aid Act, a parent who ill-treats a child commits an offence.

54. The Child Protection Act 1994, which was voted in the National Assembly last year, is presently awaiting to come into effect. Under this law, a magistrate will be given wider powers to summon any person who has injured or is likely to injure a child, either physically or mentally.

55. There is also a Children's Council which has been created for the effective and immediate protection of children exposed to violence or an environment not conducive to their welfare and/or development.

Articles 12 and 13

56. Any individual who alleges that he has been subject to torture may apply to the Supreme Court for redress under section 17 of the Constitution. Under section 17 (2), the Supreme Court may make such orders, issue such writs and

give such directions as it may consider appropriate for the purpose of enforcing any of the sections 3 to 16, to the protection of which the individual concerned is entitled.

57. It must be noted that under section 5 of the Constitution, any person who is arrested should be informed of the reasons for his arrest or detention. He must be brought before court without undue delay and be given access to a counsel of his own choice. A person in police custody can insist that any statement he makes be recorded in the presence of his counsel.

58. Under section 188 of the Criminal Procedure Act, where there has been an illegal detention, an application can be made before the judge by way of a writ of habeas corpus to justify the circumstances of the detention.

59. An aggrieved individual may also have recourse to the police authorities who will start an investigation as soon as the matter is reported. At the end of the investigation, the matter is referred to the Director of Public Prosecutions for advice and subsequent action. The latter is empowered to either advise prosecution against the offender before the court of law where a prima facie case is established or have recourse to sections 64 and 111 of the District and Intermediate (Criminal Jurisdictions) Act. Under section 64, the Director of Public Prosecution may require a magistrate to proceed to inquire into any offence where he has reasonable ground to believe that an offence has been committed.

60. Under section 111 of the same Act, he may ask for similar enquiries where a violent and suspicious death has occurred. Section 112 applies to instances where the victim has suffered some grievous bodily injury in consequence of a crime. These powers of the Director of Public Prosecution are resorted to in practice and it is worth mentioning two recent cases which were highly publicized. The first case related to two young persons, Edman Drioux and Eddy Labrosse, who were found lying on the road next to a moped. They had previously been arrested by the police and were at the time in question still supposed to be in police custody. Eddy Labrosse died three days later, as a result of head injuries. According to Edman Drioux, both Labrosse and himself had been beaten up by the police. The police strongly denied these allegations. The Director of Police Prosecutions ordered an inquiry by virtue of section 111 (supra). In her findings to the Director of Public Prosecutions, the magistrate concluded that she entertained strong doubts as to the veracity of the testimony of the police witnesses. As a result of the above, two police officers are at present being prosecuted for the offence of "wounds and blows causing death without intention to kill" (under section 228 of the Criminal Code), before the Intermediate Court. The second case relates to a detainee who was suspected of being a drug trafficker. He was found burnt to death in his cell. The police described the death as a suicide. However, the matter has been taken up by the public and the Director of Public Prosecutions has as a result sought the setting up of an inquiry to look into the cause and circumstances of the death.

61. Under the Police Service Regulations and the Public Service Regulations, provisions exist for the institution of disciplinary proceedings against any public/police officer who, on the grounds of misconduct, would justify his dismissal if proved.

Article 14

62. Victims of torture, or their dependents in the event of death, may seek redress by way of compensation for damages suffered as a result of the said unlawful act. There is no special scheme which provides for the rehabilitation of victims of torture, mainly because such occurrences are rare and attract considerable attention whenever they occur, making the availability of redress inevitable.

Article 16

Vide notes of article 4 et seq. above.

List of annexed documents*

A. District and Intermediate Courts (Criminal Jurisdiction) Act

B. Judges' Rules

C. 1994 - Standing Orders of the Mauritius Police Force

C-1 - Complaints against Police
C-2 - Discipline of the Mauritius Police Force

D. Reform Institutions Act 1988

E. Regulations made under the Reform Institutions Act

F. Prison Regulations - Standing Order No. 75

G. Standing Orders Nos. 116-118 of the Mauritius Police Force

G-1 - Access to legal advisers etc.
G-2 - Care and treatment of prisoners

H. Persons sentenced to death - Statistics

I. Police v. Beegun - 1988 MR 212

J. Police v. Boyjoo and anon. - 1991 MR 284

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* Available for consultation with the secretariat.